LEROY R. DAVIS
SUSAN H. DAVIS

IBLA 87-454, IBLA 87-665 Decided February 16, 1989

Appeals from decisions of the Boise, Idaho, District Office, Bureau of Land Management, rejecting desert land entry applications I-3850 and I-7015.

IBLA 87-454 (I-3850) dismissed; IBLA 87-665 (I-7015) set aside and remanded.

1. Desert Land Entry: Applications

The death of an applicant for a desert land entry will cause the application to lapse and, hence, where an applicant dies during the course of an appeal from rejection of his application, the appeal is properly dismissed as moot.

2. Desert Land Entry: Applications

A BLM decision rejecting a desert land entry applica-tion because it is considered not economically feasible to farm the land applied for based on a computer projection may be set aside and the case remanded where the applicant alleges facts which would tend to support a different conclusion and the BLM analysis has failed to consider relevant aspects of appellant's plan of development.

APPEARANCES: LeRoy R. Davis, Susan H. Davis, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

LeRoy R. Davis and Susan H. Davis have appealed from decisions of the Boise, Idaho, District Office, Bureau of Land Management (BLM), dated April 2 and June 25, 1987, rejecting their respective desert land entry applications, I-3850 and I-7015. The rejections were based on determinations, in accordance with 43 CFR 2520.0-8(d)(3), that it would be impractical to farm the lands sought in each entry as economically feasible operating units.

On December 31, 1970, LeRoy R. Davis filed desert land entry application I-3850 for 320.40 acres of public land situated in secs. 12 and 13, T. 7 S., R. 5 E., and in secs. 7 and 18, T. 7 S., R. 6 E., Boise Meridian, Owyhee County, Idaho. In his application, Davis proposed to cultivate alfalfa on the 240 irrigable acres, using water pumped from underground wells. On May 28, 1981, he submitted a revised plan of development for
his application, proposing to devote 160 acres to alfalfa, and 40 acres
each to barley and green chop for dairy cattle. Davis noted that he presently farmed land adjacent to the lands sought and that he would use the crops grown as feed for his dairy cattle. He projected a net annual income of $49,400 based on the value of the crops produced less the expenses of production. On May 26, 1982, pursuant to his application, the land was classified as suitable for agricultural development under the Desert Land Entry Act of 1877, as amended, 43 U.S.C. || 321-339 (1982).

Similarly, on July 6, 1973, Susan H. Davis filed desert land entry application I-7015 for 320 acres of public land located in secs. 7, 8, and 18, T. 7 S., R. 6 E., Boise Meridian, Owyhee County, Idaho. She proposed
to grow 260 acres of alfalfa and to irrigate the land by means of a sprinkler system with water pumped from a well drilled on the land. She also revised her plan of development in May 1981. In November 1981, BLM noti-fied her of a proposed decision to classify the lands she sought as unsuitable for desert land entry applications.

Thereafter, on February 1, 1982, she submitted an amendment to application I-7015, deleting certain lands originally sought and requesting other lands in secs. 7 and 18, totalling 320 acres, of which 298 acres were irrigable. In her amended application, appellant indicated the source of water would be two wells, citing water permit #51-7052. Her amended application was accompanied by a letter from a consultant which indicated:

> A verbal agreement with the Davis Dairy Farm has been made to purchase all Alfalfa and Barley produced at market cost. For the purpose of Economical Feasibility, figures for marketing have been entered in as a cost but they will be minimal as the Davis Dairy Farm joins the Entry in Section 7.

Appellant proposed to devote 223 acres to alfalfa and 75 acres to barley, and projected a net annual income of $4,330. By decisions dated May 26, 1982, and April 10, 1986, the Idaho State Director classified 200.26 acres of her application as suitable for agricultural development under the Desert Land Act.

Thereafter, BLM undertook an economic analysis to determine the practicability of farming the lands embraced in the applications which had been classified as suitable. BLM sought to determine if the lands were economically feasible operating units in accordance with 43 CFR 2520.0-8(d)(3). Each application was analyzed separately. The analysis consisted of running figures for projected costs, revenues, and other variables for a standardized crop distribution through a computer model developed by BLM and the Idaho Department of Water Resources, resulting in a calculation of total net

revenue for each operating unit. In each case, the total net revenue was a negative figure.

In its decisions rejecting appellants' applications, BLM noted that the factors to be considered in determining whether a desert land entry application can be allowed include the topography and character of the lands sought, the private lands farmed by the applicant, and the farming systems and practices common to the locality. It stated that it used a computer model to determine the practicability of farming the lands as an economically feasible operating unit, and that a standard crop rotation was used in the model, although BLM asserted information submitted by the applicant was used where appropriate. Based on the analysis, BLM concluded that desert land entry application I-3850 would have annual operating costs of $162,000 and total revenues of $133,500, for an annual net loss of $28,500, and that desert land application I-7015 would have annual operating costs of $148,595, total revenues of $106,235, for an annual net loss of $42,360. Therefore, BLM rejected both applications.

In their statements of reasons, appellants note that they currently farm 320 acres of land adjacent to the lands sought in their applications, and that they have a 60-cow dairy herd. They contend that they were advised by the Soil Conservation Service of the United States Department of Agriculture (SCS) that, since they were in the cow business with 60 cows and 60-100 calves, they should look into a pasture program for the lands sought. Based on the pasture management program described in a booklet given to them by the SCS, they argue that they could turn a profit by managing the land as pasture land.

Specifically, appellants allege that it is possible for them to pro-duce 937 pounds of beef per acre of pasture land by following the pasture program outlined by the SCS brochure. Based on a price for Holstein heifers of $1.00 per pound and steers of $.60 per pound, they calculate a price of $.80 per pound or $749.60 per acre. Using BLM's determinations of annual operating costs, appellants argue that a net return of $17,904 for I-3850 and of $43,585 for I-7015 are possible. Appellants recognize that their cow and calf numbers are not now large enough to fully stock all the land, but they state that they would buy more cattle as the pasture developed. Therefore, they contend that their proposed operations are economically feasible and that their applications should be allowed.

[1] Subsequent to our docketing of the appeal by LeRoy R. Davis (IBLA 87-454) and the submission by appellant of his statement of reasons for appeal, the Board was advised by BLM of the death of LeRoy R. Davis on June 3, 1988. This raises a threshold question of the status of his application.

The right to perfect a desert land entry by presenting proof and proceeding to patent has been recognized in the heirs of a deceased claimant whose entry was allowed but who died before proof could be presented. Phillips v. Carter, 67 P. 1031 (Cal. 1902). A property right in the heirs of an entryman under an allowed desert land entry has been authorized in certain circumstances in the statute itself. 43 U.S.C. | 336(c) (1982).

The assignability of allowed entries has also been recognized. 43 U.S.C. | 324 (1982); United States v. Hammers, 221 U.S. 220 (1911); Phillips v. Carter, supra. However, we think these cases are distinguishable from the situation herein where the applicant died subsequent to rejection of his application for desert land entry. It has been recognized by the Depart-ment that an unapproved application for desert land entry does not vest any rights in the applicant. See Frances M. Williams, A-28034 (Aug. 20, 1959). Hence, we find that the application is properly considered to have lapsed with the death of the applicant. 1/ Accordingly, the appeal of LeRoy R. Davis is properly dismissed as moot. The appeal by Susan Davis from rejection of her application remains before us for review.

[2] Section 1 of the Desert Land Entry Act of 1877, as amended, 43 U.S.C. | 321 (1982), provides for the patenting of tracts of desert
land not exceeding 320 acres to persons who make satisfactory proof of reclamation of the land and pay the required purchase price. The statute states that the entered tracts of land shall be "managed satisfactorily as an economic unit." 43 U.S.C. | 321 (1982). Accordingly, the applicable regulation, 43 CFR 2520.0-8(d)(3), provides that, in determining whether to allow a desert land entry, the authorized BLM officer will take into account various factors, including the "practicability of farming the lands as an economically feasible operating unit."

The question of economic feasibility, according to the BLM Manual at 2520.0-6(A)(4) (Oct. 21, 1974), is whether the land

> can be developed into a profitable operation on a "permanent" basis. The value of the increased production of a given tract of land must be sufficient to provide a profit after all costs have been deducted. This profit must be large enough to ensure the expectation of continued cultivation. * * * The concern is with the stability of the farming operation.

Where the evidence has established that the lands sought cannot be farmed as an "economically feasible operating unit," we have affirmed BLM's rejection of a desert land entry application based on that rationale. See Roger K. Ogden, 77 IBLA 4, 90 I.D. 481 (1983). Rejection of a desert land entry

1/ We recognize that classification of the land as suitable for desert
land entry pursuant to appellant's petition for classification gave the applicant a preference right to have his application considered. 43 U.S.C. | 315f (1982); see Richard S. Gregory, 96 IBLA 256, 258 n.1 (1987). It has been stated that this preference right would survive a subsequent withdrawal of the land. Richard S. Gregory, supra, citing G. Arden Gingery, 2 IBLA 351 (1971) (a case in which it was recognized that an allowed desert land entry would survive a subsequent withdrawal of the land). This does not support a finding that a rejected application for desert land entry survives the death of the applicant. However, that would not preclude the heir or heirs of an applicant, who are otherwise qualified, from pursuing a desert land entry for the same lands.

application will be set aside, however, where the applicant has alleged facts which, if proved, would result in a different conclusion. See David V. Udy, 81 IBLA 58 (1984); Joanne F. Wright, 49 IBLA 237 (1980); Dixie J. Bjornestad, 27 IBLA 201 (1976). Because we find that the specific plan for development proposed by appellant suggests a finding that farming the lands would be economically feasible, we set aside BLM's decision and remand the case in I-7015 for further consideration.

At no point in its decision does BLM discuss any of the specific proposals made by appellant concerning the use of the lands identified in the application. BLM relies totally on its computer analysis to reach its conclusion that the application is unacceptable because the land cannot be farmed as an economically feasible operating unit. 2/ In so doing, BLM used a standard crop rotation as the basis for its calculations and not the specific crops appellant proposed to cultivate. 3/ While it is clear that BLM may properly utilize economic feasibility analysis in adjudicating a desert land entry application, the record must also show that BLM considered the specific plans of the applicant. If the crop rotation proposed by the applicant is not adequate to sustain a viable operation, then the record should show that. Mere use of the standard crop rotation by BLM without explanation is not enough to discredit an applicant's proposal. Nevertheless, as we stated in Frederic C. Tullis, 102 IBLA 215, 223 (1988), the applicant bears the ultimate burden of establishing the economic feasibil-ity of farming the land.

A determination of whether it is economically feasible to farm a tract of land must consider, to a certain extent, the particular circumstances of the desert land entry applicant. See Frederic C. Tullis, supra at 222; David V. Udy, supra at 64. In this case, these circumstances include appellant's ownership of an adjacent dairy cattle farm and the plans to cultivate pasture crops on the applied-for lands as feed for the cattle. This Department has recognized that in situations where desert land applications are proposed for development in conjunction with private lands of the petitioner-applicant, the private lands should be considered in judging the economic feasibility of the proposal. Frederic C. Tullis, supra at 222; see James Leland Wallace, 100 IBLA 70, 71-72 n.3 (1987). Nothing in the record indicates that BLM took these circumstances into account in its decision to reject Susan Davis' application.

2/ When BLM considers whether an entry can be allowed in the form sought, there are other factors listed in 43 CFR 2520.0-8(d)(3) to be analyzed besides the feasibility of the entry as an isolated unit. BLM's computer model does not explicitly provide any discussion of "the private lands farmed by the applicant," and "the farming systems and practices common to the locality and the character of the lands sought," and BLM provides no indication that it evaluated these factors.

3/ The standard crop rotation established by BLM consists of 5 percent alfalfa hay, 17 percent winter wheat, 17 percent barley, 1 percent alfalfa est., 22 percent potatoes, 17 percent sugar beets, and 21 percent dry beans.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal in IBLA 87-454 (I-3850) is dismissed and the decision appealed from in IBLA 87-665 (I-7015) is set aside and the case is remanded for further consideration.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge